

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 597 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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MANOGNABEN RAJESHKUMAR VYAS

Versus

RAJESHKUMAR SHIVLAL VYAS

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Appearance:

MR SANDEEP N BHATT for Petitioners

MR RN SHAH for Respondent No. 1

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CORAM : MR.JUSTICE R.BALIA.

Date of decision: 04/02/98

ORAL JUDGEMENT

Heard Learned Counsel for the appellant and the respondent. The appeal is to challenge the order dated 28.8.97 passed by the Additional Civil Judge (SD) rejecting the plaintiff's application Exh.5 for grant of temporary injunction pending their suit. As per the say of the plaintiffs, they are entitled to claim residence and maintenance from respondent no.1 who is husband of

appellant no.1 and father of minor appellant no.2. The present suit is for permanent injunction restraining the defendants from dispossessing the plaintiffs from the suit property. The admitted facts are that suit property has been sold by respondent no.1 on 3.5.94 and now does not vest in him. The suit has been filed on 9.5.94 i.e. after the suit property has ceased to be of the respondent no.1 against whom, the plaintiffs have claim for maintenance and separate residence, if any. In exercise of their right of maintenance and separate residence ordinarily the plaintiffs cannot reach the property of third party, unless transaction itself is found to be fraudulent in order to defeat their rights. The mere fact that the defendants have transferred the property does not defeat the right to maintenance and separate residence if the same is established and that also does not depend upon owning any residence by the husband and father of the appellants.

2. In these circumstances, I do not find that the Trial Court was in error in finding no prima facie case in favour of the appellants.

3. Appeal fails and is hereby dismissed. No order as to costs.

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